

MANUEL ALONSO and SHERYL ALONSO,

Plaintiffs,

v.

MITCHELL RAYMOND, RAYMOND TIMBER FRAMED HOMES, LLC, RAYMOND TIMBER HOMES, LLC,

Defendants.

ORDER

Manuel Alonso and Sheryl Alonso (“Plaintiffs”) filed their “Complaint” (Document No. 1) initiating this action on October 18, 2013. On December 3, 2013, “Defendant Raymond Timber Framed Homes, LLC’s Motion To Dismiss” (Document No. 5) was filed. The next day, December 4, 2013, “Plaintiffs’ First Amended Complaint” (Document No. 8) was filed with the Court. “Plaintiffs’ Memorandum Of Law In Response To Defendant Raymond Timber Framed Homes, LLC’s Motion To Dismiss Complaint” (Document No. 9) was then filed on December 5, 2013. In pertinent part, the “...Response...” notes that Plaintiffs had filed an amended complaint within 21 days of Defendant’s motion to dismiss, as allowed by Fed.R.Civ.P. 15(a)(1)(B).

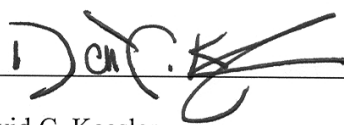
(Document No. 9, p.1). Defendants have not filed a reply brief in support of the pending motion to dismiss, or notice of intent not to file a reply, and the time to do so has lapsed. See Local Rule 7.1 (E).

It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings may be denied as moot. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001) (“The general rule ... is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect.”); see also, Colin v. Marconi Commerce Systems Employees' Retirement Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) (“Earlier motions made by Defendants were filed prior to and have been rendered moot by Plaintiffs’ filing of the Second Amended Complaint”); Turner v. Kight, 192 F.Supp. 2d 391, 397 (D.Md. 2002) (quoting 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1476 (2d ed. 1990) (“A pleading that has been amended ... supersedes the pleading it modifies Once an amended pleading is interposed, the original pleading no longer performs any function in the case.”); Brown v. Sikora and Associates, Inc., 311 Fed.Appx. 568, 572 (4th Cir. Apr. 16, 2008); and Atlantic Skanska, Inc. v. City of Charlotte, 3:07-CV-266-FDW, 2007 WL 3224985 at *4 (W.D.N.C. Oct. 30, 2007).

Because Plaintiffs filed an Amended Complaint (Document No. 8) which supersedes the original “Complaint” (Document No. 1), the undersigned will deny as moot the pending motion to dismiss. This Order is without prejudice to Defendants filing a renewed motion to dismiss the Amended Complaint, if appropriate.

IT IS, THEREFORE, ORDERED that “Defendant Raymond Timber Framed Homes, LLC’s Motion To Dismiss” (Document No. 5) is **DENIED**.

Signed: February 24, 2014



David C. Keesler
United States Magistrate Judge

